

BenchMarks: Brian S. McCarville

Superior Court Judge,
County of San Bernardino
by Ed Butler

Prospective new judges need to bring an eagerness to be fair, a “servant’s heart,” and willingness to be challenged in subject areas outside their attorney areas of practice.

That’s the advice of Judge Brian S. McCarville, a San Bernardino County judge for nearly 16 years.

Now presiding over criminal fast track calendar at the Superior Court’s San Bernardino District, Judge McCarville formerly was a nine-year prosecutor in the Riverside County district attorney’s office. He was its Prosecutor of the Year in 1986 and left the office in the capacity of supervising deputy in charge of special prosecutions in career crime, major narcotics and child sexual assault.

Judge McCarville says that while there are far fewer attorney generalists these days, with many adopting areas of emphasis, new judges “have to demonstrate a willingness to accept any type of assignment, to be challenged.” In his own case, he has presided for extensive periods over civil matters, which he especially enjoys, and also family and criminal matters. Also a former supervising judge of San Bernardino District, he feels judicial assignments should be at least three years at a time, so that a bench officer new at a subject can adapt and come up to speed.

Judge McCarville recalls that he always wanted to be an attorney, going back to his growing years in Monrovia. His mother observed him to be a talkative child, and he found that he enjoyed argument. “I thought (lawyering) would be a fun thing to do.”

The son of a certified public accountant father, he went out for football at Bishop Amat High School in La Puente, playing right offensive guard. Also exhibiting his competitive nature was his embrace of off road racing, until an injury sidelined him in 1976.

He busied himself with part-time jobs as he earned a bachelor’s degree in history at California Polytechnic University, Pomona, and his juris doctor degree at the University of La Verne College of Law. The side work included building trophies and engraving at Debco Manufacturing in Pasadena, maker and seller of trophies and emblematic jewelry. Then came a long stint with United Parcel Service, first at its Covina plant and then the Baldwin Park hub. His job roles included that of adjuster, i.e. processing problem parcels, picking up parcels for dispatch, and serving as swamper. This last role consisted of accompanying a semi truck

driver to a business shipping a large volume of parcels, and loading the 20-foot shipping container.

Admitted to the California Bar in 1979, Judge McCarville spent his first two years of practice at a civil litigation firm in Arcadia, Boller, Suttner and Gekas. Its involvements included probate, representing title insurance companies and savings and loans, and a wide spectrum of land use legal responsibility. A large litigation emphasis was in representing land developers.

With a strong urge to try cases, Judge McCarville put his line in the water and came up with several job offers from district attorneys around the state. Partly because his wife, Ellen Marie, was well established in her registered nurse job, Judge McCarville opted for Riverside County so that the family could remain in the region.

At the DA’s office he found plenty of trial work, at which he excelled. Among the higher profile defendants he prosecuted were a child psychologist who had had sex with a street prostitute of 13, and a professional basketball player convicted of the special circumstances murder of his wife.

Also while a prosecutor Judge McCarville served a year as president of the county deputy district attorneys association. He says at that time there was a major grievance over pay and benefits which nearly resulted in a job action. Faced with a “crisis of conscience,” the worker group refrained from taking a job action.

Judge McCarville says his interest in judging was kindled in part by appearing before judges whom he admired, such as Bob Timlin, Howard Dabney and Tom Hollenhorst, who previously was his boss at the DA’s office. He drew encouragement from them that he consider judging as his next career step.

Appointed at age 36 by Gov. Deukmejian, he began his bench career as a Municipal Court judge handling criminal matters for about half a year. When Appellate Justice Betty Richli was elevated to Superior Court, he took over her civil fast track calendar. He continued that for five years before a criminal assignment at Fontana. Soon after that shift, in 1995, he was elevated by Gov. Wilson to Superior Court. Then came return to Central for two years of criminal fast track, four years of family court, and now criminal fast track again for about the past year.

Felony cases come to his trial department after the preliminary hearing phase. After starting Mondays through Thursdays with pretrial conferences and arraignments, he presides over trials the rest of the day. Fridays are devoted to miscellaneous hearings.

Judge McCarville says his favorite type of calendar is civil, as it entails wide variety in subject matter and medical malpractice cases and construction defect litigation are particularly interesting. His second favorite calendar is family, as he finds it fast-paced and an opportunity to be of assistance to people. He admits that judges in family are “extremely overworked,” but unlike

the reports of some, he does not find it cumulatively stressful.

He admits that criminal adjudication can be somewhat routine, with less diversity of issues, and compared to other subjects “it’s not as intellectually stimulating from a judge’s point of view.”

San Bernardino’s infamous workload keeps judges hopping, however, as evidenced one recent morning by Judge McCarville’s quick handling of plea bargains for several defendants in the room. At that time he was having to cover a neighboring courtroom as well as his own, because the neighboring judge was on vacation. Judge McCarville expressed regret at a mere five minutes being spent dispatching a plea bargain that would send a young man to prison for 17 years on multiple felonies.

He says that while the local bench strives for a just result in the face of the workload, there is worry among judges that with such speediness the “appearance of justice” could suffer.

He adds that when judges are gone on vacation or otherwise unavailable, sharing their workload can result in shortening of the trial day, with startup as late as 1:30 p.m. This results in inconvenience for both litigants and jurors, he notes.

Judge McCarville says all of the court’s calendars are impacted by these kinds of time pinches. “If we didn’t have the assigned judges, I don’t know what we’d do,” he says.

Among other court issues, Judge McCarville says the number of available jurors has increased significantly since the court embarked on a crackdown on jurors ignoring their summonses. He is the judge at San Bernardino with the job of running the “order to show cause” calendar for those that have been sent certified follow-up letters for failure to appear. He finds such a calendar might typically have 14 people every two weeks, out of which a half to two thirds appear on the special summons. If they give him a good reason, he will simply order them back for jury service. Sometimes they don’t qualify because they aren’t citizens, don’t speak English or are felons. The response rate has been poor in cases in which the sheriff has had to deliver a third summons, he adds.

Judge McCarville supports collaborative courts as integrating many good things to help defendants get on with their lives. He has partnered in presiding over drug and mental health courts run by Judge Patrick Morris, who at the moment was on leave as candidate for mayor of San Bernardino. Judge McCarville says one concept being bandied about is a “one family, one judge” wholistic approach to collaborative courts. One sticking point on that idea is the closed character of juvenile dependency and delinquency courts.

As for self representing litigants, Judge McCarville sees them getting mixed results for themselves. While there is the problem sometimes of pro per family litigants, who are legion, not filing response papers in a timely fashion, he finds that more user

friendly packets now provided by the courts have helped things flow more smoothly.

When all is said and done, Judge McCarville says judging "is an interesting job. I enjoy working with attorneys. I really like the company of lawyers." He enjoys the idea of resolving cases and conflicts and putting cases through the system "hopefully in an efficient manner."

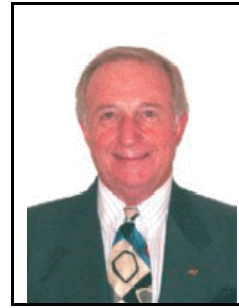
Asked for general advice for attorneys appearing in his court, Judge McCarville points to his own penchant for promptness. If an attorney is running late he appreciates that he call, and without that, he will move on with other scheduled matters. He expects attorneys to adhere to the rules of the court, and points out that failure to file documents on time hurts efficiency.

Off work, Judge McCarville is an avid walker and covers several miles daily in Loma Linda, where he lives. He also enjoys swimming and yard work and travels with his family, such as a month in Ireland this year. He has taken other trips to Europe, has visited 46 of the U.S. continental states, and especially enjoys Arizona and the Deep South.

He and Ellen Marie have two daughters, one a registered nurse who graduated from the University of San Francisco, and the other a senior at California State University, Fullerton.

Ed Butler is Rancho Cucamonga branch manager of the Law Library for San Bernardino County.

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